IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 469 OF 2005

Satya Prakash Bahl ...Petitioner

Versus

The Intelligence Officer,
N.C.B. Mumbai & Others ...Respondents

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Mr. Shirish Gupte, Senior Advocate with Mr. R.G. Merchand Adv. with S.A. Khan for Petitioner.

Mr. D.N. Salvi, Advocate for respondent No.1.

Mr. V.B. Konde Deshmukh, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED OF RESERVING THE ORDER : 20TH JUNE, 2005

DATE OF PRONOUNCING THE ORDER : 24TH JUNE, 2005

P. C.:-

1. Heard both sides.

2. The petitioner has prayed that the order dated 28.12.2004 passed by the learned Special Judge for N.D.P.S. Cases City Sessions Court Mumbai in M.A. No. 263 of 2004 be quashed and set aside. By the said order, the learned Special Judge rejected the discharge as well as bail application preferred by the present petitioner i.e. Satya Prakash Bahl. The petitioner is the original accused No.6 in a case

under the N.D.P.S. Act i.e. Special Case No. 41 of 2002 which is pending before the Special Judge (N.D.P.S.) for Greater Bombay.

3. Brief facts of this case are that on 10.11.2001, Officers of the Narcotic Control Bureau raided a premises at Meera Road, Bhayander. At the time of raid, original accused Nos. 1 to 4 were found in the premises and while the raid was going on, accused No.5 i.e. Niranjan Singh Shethi came to the said premises. In the said premises, 11.50 Kgs. of Heroin came to be found. The statement of accused persons including accused No.5 Niranjan Singh Sethi came to be recorded. In his first statement dated 10.11.2001, Niranjan Singh Sethi did not implicate the present petitioner. However, in the second statement which was recorded on the very next day i.e. on 11.11.2001, the accused No.5 Niranjan Singh Sethi has implicated the present petitioner. He has stated that he met the present petitioner when he was in jail. On three earlier occasions, the petitioner had given Heroin to him. In the present case also he (Niranjan) had contacted the petitioner for Heroin and it was the petitioner who had supplied to him the Heroin seized in the present case.

4. It is stated by the learned counsel for the petitioner that the only material against the

petitioner is the statement of Niranjan Singh Sethi dated 11.11.2001 and the said statement has been retracted by the accused No.5 Niranjan Singh Sethi. Thus, it is submitted that the only material against the present petitioner is the retracted confessional statement of the co-accused in the said case. It is submitted that the said material cannot be relied upon and hence, the petitioner is entitled to be discharged or in the alternative granted bail by this court.

5. In support of the contention that the confessional statement of a co-accused cannot be relied upon reliance has been placed on the decision of the Full Bench of this Court, dated 5.11.2004 in Writ Petition No.1742 of 2004 in the case of **Saquib Abdul Hameed Nachan.** The said decision was rendered in a case under POTA and in the said decision it has been held that the confessional statement of co-accused cannot be used as substantive piece of evidence against another co-accused. So also reliance was placed on my decision **dated 19.10.2004 in Criminal Revision Application No. 55 of 2004 in the case of Monish H. Bhalla Vs. Satya Prakash Bahl**. In the said decision, in revision I had upheld the order of the learned Special Judge discharging the accused therein i.e. the present petitioner. The accused was discharged on the ground that the

only material against the accused was the confessional statement of the co-accused, and an accused cannot be held guilty under the N.D.P.S. Act only on the basis of confessional statement made by another co-accused.

6. In the present case it is an admitted position that the charge has been framed and that the trial is going on. Two witnesses have been examined. It is also an admitted position that the petitioner was earlier involved in four cases registered under the N.D.P.S. Act. It is true that he has been acquitted in two of the said cases i.e. N.D.P.S. Special Case No.170 of 1996 which was decided on 31.3.1999 and N.D.P.S. Special case No.61 of 1997 which was decided on 8.12.1998. In the third case he came to be discharged i.e. case related to M.E.R. No. 51 which is referred to in the earlier para. In the 4th case he was arrested for Drug Trafficking by the Rotterdam Police and convicted by the Court of Amsterdam on 26.2.1998. The Supreme Court of Holland set aside the conviction and remanded the case back to the High Court for re-trial. The learned counsel for the petitioner has admitted this position, however, he has been unable to state as to what happened thereafter. On the other hand, it is the case of the prosecution that the petitioner escaped from the prison in Holland and came back to India

without proper documents i.e. though his passport was in possession of the Court which convicted him, he managed to escape and come back to India.

7. In the present case the main issue is whether in a case under N.D.P.S. the confessional statement of co-accused can be relied upon to convict the other accused who is tried in the same trial. All the decisions on which the reliance has been placed on behalf of the petitioner are those of our High Court. However, in the decision of the Supreme Court in the case of **Prabhakar Hiraman Jathar Vs. State of Maharashtra & Anr in Criminal Appeal No. 157 of 2003 decided on 24.9.2003** it has been held that the confessional statement of an accused against the co-accused is admissible and conviction can be based on the same. In the said case 124 Kgs of Ganja was found in the vehicle, the accused No.1 was driver of the vehicle. The accused No.1 has stated that he transported the contraband at the instance of A4 i.e. the appellant therein and accused No.2 stated that the appellant hired the room belonging to him and appellant used to store the contraband in the said room. The only material in the said case were the confessional statements of the co-accused. In the said case the Supreme Court has observed thus:-

> "A perusal of the statement made by A1 and A2 to the investigating officer clearly shows that while A1 transported the contraband knowing it to be Ganja in the Car at the instance of the appellant herein, A2 stated that the appellant hired the room in question belonging to him and A4 used to store contraband in the said room, therefore, it is clear from the confession of these two accused that the appellant was involved in purchase, storing and in sale of contraband goods. Since such statement of accused A1 and A2 is admissible as against the appellant as per the findings of the two courts below, we find no reason to interfere with the same. Therefore, the appeal fails and the same is dismissed."

. In the present case also the prosecution has relied on the confessional statement of co-accused. The situation in the present case and in the case of Prabhakar Hiraman Jathar (supra) is the same. In view of the observations of the Supreme Court in cases under the N.D.P.S. Act in relation to the confessional statement of co-accused against another accused, it cannot be said that there is no material to proceed against the present petitioner. As stated earlier, the trial in the present case is going on

and two witnesses have already been examined. The Supreme Court has observed in the case of **State of Delhi Vs. Gyan Devi and Ors. AIR 2001 SC 40** that when only a few witnesses have been examined and the evidence is not closed, the High Court should not prejudge the issue and quash the charge. In the present case also the evidence is not over and the trial is going on. No doubt the confession of accused No.5 Niranjan Singh is retracted, however it is well settled that a person can be convicted on the basis of his retracted confession. How much reliance can be placed on the retracted confession of a co-accused can only be ascertained after the entire evidence is led. Thus, in such case in view of the observations of the Supreme Court in the case of Prabhakar Hiraman (supra), it would not be proper to quash the charges against the petitioner at this stage. As there is sufficient material to proceed against the petitioner, no case is made out for discharge.

8. As far as the prayer for bail is concerned, looking to the previous history of the petitioner and the facts of the present case, I am of the opinion that there is reasonable ground for believing that the petitioner has committed an offence punishable under Section 29 of the N.D.P.S. Act. Looking to the history of the petitioner, it cannot be said that

if the petitioner is released on bail he would not be likely to commit any offence while on bail. Thus, in this view of the matter, I do not think that this is a fit case to grant bail.

9. The learned Special Judge has considered the antecedents of the petitioner as well as the legal position and the decision of the Supreme Court in the case of Prabhakar Jathar and has rejected the application for discharge or bail preferred by the petitioner. Looking to the facts and circumstances of this case, I do not find any reason to interfere with the said decision.

10. Criminal Writ Petition is dismissed.

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